

AFRICA RISK CONSULTING**Zambia Monthly Briefing November 2017**

Zambia Summary 24 November 2017

President Edgar Lungu (2015-present) warns Zambia's judges not to block him from running in the 2021 elections. Opposition parties argue that Lungu has served the constitutional limit of two terms and should not stand. The International Monetary Fund (IMF) announces that it has halted bailout talks until Zambia is able to implement programmes to achieve sustainable debt levels, which are currently at 47% of gross domestic product. The United Kingdom (UK) court of appeal rules that a claim from villagers in Zambia against UK-based Vedanta Resources and its Zambian subsidiary, Konkola Copper Mines, can be heard in the UK rather than in a Zambian court. The ruling has the potential to lead to further claims of damages from foreign individuals in the home domicile of multinational companies.

Lungu warns judiciary not to block him from running in 2021 elections

President **Edgar Lungu** (2015-present) warned **Zambia's** judges on 3 November not to block him from running in the 2021 elections.¹ Lungu is expected to contest the 2021 presidential elections, though opposition parties argue that Lungu will have served the constitutionally mandated limit of two terms.² Lungu warned that judicial intervention could result in political chaos, using the recent example of **Kenya's Supreme Court** which annulled its 2017 presidential election results.³ Lungu spoke to supporters in **Solwezi** in north-western Zambia, stating,

*"...to my colleagues in the judiciary, my message is just do your work, interpret the law without fear or favour and look at the best interest of this country. Don't become a copycat and think that you are a hero if you plunge this country into chaos... People are saying that Zambian courts should emulate Kenyan courts. People are saying that Zambian courts should be brave and make decisions which are in the interest of the people, but look at what's happening in Kenya now. Whether I am eligible to stand or not in 2021 should not be dependent on the case in Kenya."*⁴

Lungu has yet to formally register his candidacy, but if he does opposition parties may seek to have his bid ruled as unconstitutional. Lungu has stated that *"I am available to stand if my party chooses me."*⁵ Lungu became president in January 2015 after the death of former president **Michael Sata** (2011-2014), and was then re-elected in 2016 (though opposition leader **Hakainde Hichilema** disputed the results – see previous *ARC Briefing Zambia*). It remains unclear whether the courts would consider Lungu on his first, or second term, considering his first electoral victory was a mid-term presidential election following the death of a president in office.⁶

Lungu denied he was trying to intimidate the judiciary, though he did refer to his speech as a "warning".⁷

¹ News24, 3 Nov 2017.

² News24, 3 Nov 2017.

³ News24, 3 Nov 2017.

⁴ Multiple sources: NewsdzeZimbabwe, 3 Nov 2017; News24, 3 Nov 2017.

⁵ Kenyan Nation, 3 Nov 2017.

⁶ News24, 3 Nov 2017.

⁷ News24, 3 Nov 2017.

“I want to close by saying that those people who don’t like peace and freedom will say ‘President Lungu is intimidating the courts of law’ – I am not intimidating the judiciary. I am just warning you because I have information that some of you want to be adventurous; your adventure should not plunge us into chaos please.”⁸

The law association of Zambia asked Lungu to withdraw his warning, arguing that it undermined “*the authority of the judiciary and erode[s] public confidence in the institution.*”⁹ Zambian vice-president, **Inonge Wina**, told parliament on 3 November that Lungu did not warn judges, but merely ‘counselled’ them against making decisions which could cause confusion in Zambia.¹⁰ Zambia’s Supreme Court was scheduled to discuss the election case on 16 November, though there has been no update on their discussions.¹¹

Lungu’s warning to the courts may be in anticipation of an opposition request to bar Lungu from entry into the 2021 elections. Lungu may fear that the Zambian courts will follow the example set by the Kenyan courts and rule against the government, which would result in a new leader having to stand for Lungu’s **Patriotic Front (PF)**. Lungu may also be fearful that, if elected in 2021, Hichilema will return to the courts to annul the election as he did in 2016,¹² although the results may be different given the outcome in Kenya. The constant political battles are likely to cause further political instability, which may lead to a further loss of investor confidence and increased economic difficulties.

IMF halts bailout talks with Zambia

The **International Monetary Fund (IMF)** announced on 27 October that it had halted bailout talks with Zambia.¹³ According to the IMF representative in Zambia, **Alfredo Baldini**, the talks were put on hold to reassess the government’s external borrowing plans and to reconcile the plan with the IMF programme’s key objective, which is to achieve sustainable debt levels.¹⁴ Zambia has requested a \$1.3 billion bailout from the IMF, but it appears that the IMF will not approve funding until it is satisfied that Zambia has debt sustainability.¹⁵ Zambia’s total public external and domestic debt is 114.9 billion kwacha (K) (\$12.4 billion) as of August, equivalent to 47% of gross domestic product (GDP).¹⁶

Despite the IMF’s assertion that talks are on hold, Zambia’s finance minister, **Felix Mutati**, remains positive that the talks will be successful. Speaking to parliament on 22 November, Mutati stated that part of the 2018 budget includes financing support from bilateral and multilateral partners, which depend on recommendations from the IMF.¹⁷ He was responding to a question from a member of parliament, **Frank Kufwakwandi**, who asked Mutati when the IMF discussions would be completed.¹⁸ Mutati did not give a date, but stated that the IMF staff mission would be completed before the end of 2017, which would then allow a timetable to be made for discussions.¹⁹ President Lungu also called for a speedy conclusion of negotiations, stating that

“although we remain committed to continue on the path of economic reform and stabilisation, there is need to bring the programme negotiations to a conclusion.”²⁰

The **Bank of Zambia** governor, **Denny Kalyalya**, has also pressured government to complete the deal and claimed that the delay was putting pressure on the kwacha.²¹ The kwacha slid from K8.7 per

⁸ News24, 3 Nov 2017.

⁹ Reuters, 3 Nov 2017.

¹⁰ ZNBC, 3 Nov 2017.

¹¹ Reuters, 3 Nov 2017.

¹² Reuters, 19 Aug 2016.

¹³ Anadolu Agency, 27 Oct 2017.

¹⁴ Anadolu Agency, 27 Oct 2017.

¹⁵ Anadolu Agency, 27 Oct 2017.

¹⁶ Zambia Daily Mail, 24 Nov 2017.

¹⁷ Zambia Daily Mail, 23 Nov 2017.

¹⁸ Zambia Daily Mail, 23 Nov 2017.

¹⁹ Zambia Daily Mail, 23 Nov 2017.

²⁰ Zambia Times, 2 Nov 2017.

dollar in August to K10.12 in November due to a decrease in foreign currency supply and increased demand for dollars.²² Kalyalya stated that

“...it is more of sentiment because the fundamentals point to continued appreciation. One of the factors has been that players were looking to the conclusion of an IMF programme before the end of the year.”²³

Zambia needs the bailout to stop its debt from reaching a possible 60% of GDP, but also to pay off several Eurobonds which come due from 2020 onwards. While the IMF is likely to grant Zambia the loans to prevent its economy from crumbling, it will likely ask for further concessions against spending on infrastructure and public services. This may, in turn, result in negativity against the ruling PF if they are unable to keep their promises to the electorate.

Landmark ruling means Zambian villagers can sue UK companies in UK courts

A landmark ruling on 13 October in the **United Kingdom (UK) Court of Appeal** means that Zambian villagers can now bring a claim against UK-based **Vedanta Resources Plc** and its Zambian subsidiary, **Konkola Copper Mines (KCM) Plc**, over personal injury, damage to property or loss of income.²⁴ The ruling stems from civil proceedings that **Chingola** residents brought against Vedanta and KCM on 31 July 2015 over pollution from waste discharged from the **Nchanga** copper mine, which KCM owns and operates.²⁵ The lawyers for the Zambian villagers served the claim for civil proceedings to the High Court in the UK, as Vedanta is UK-based, rather than through a Zambian court. The High Court held on 19 August 2015 that the Zambian villagers could bring their case to the courts in the UK, despite the alleged infraction and damages occurring in Zambia.²⁶ Vedanta and KCM appealed on 15 September 2015, arguing that UK courts do not have jurisdiction to hear the claims and that Zambia is the appropriate place to hear the claims.²⁷ However, the landmark ruling dismissed Vedanta and KCM’s appeal, which means the case may be heard before UK courts.²⁸

The ruling means that parent companies domiciled in the UK or **Europe** may in future be liable to claims from other jurisdictions. There have been other cases brought against large multinationals, including **Shell** and **Unilever**, by foreign claimants, but this ruling is the first in which it was decided that there is a case for the UK-parent company to answer the claims, rather than the locally based subsidiary.²⁹ Parent companies must now ensure that their subsidiaries are acting in compliance with local regulations and that adequate procedures are in place to ensure compliance or face the risk of a large claim brought against the parent company in its domicile.

Planner

2021 (**Zambia**) Scheduled presidential elections;

Chronology

23 Nov 2017 **Lusaka (Zambia)** *Lusaka Times*. The **International Monetary Fund (IMF)** states that Zambian banks are under severe fiscal pressure;

22 Nov 2017 **Lusaka (Zambia)** *Reuters*. Zambia’s central bank cuts lending rate to 10.25 points,

²¹ Lusaka Times, 23 Nov 2017.

²² Multiple sources: Zambia Daily Mail, 24 Nov 2017; Lusaka Times, 23 Nov 2017.

²³ Reuters, 22 Nov 2017.

²⁴ Lungowe and Ors. v Vedanta Resources Plc and Konkola Copper Mines Plc [2017] EWCA Civ 1528

²⁵ Norton Rose Fulbright, Nov 2017.

²⁶ Norton Rose Fulbright, Nov 2017.

²⁷ Norton Rose Fulbright, Nov 2017.

²⁸ Norton Rose Fulbright, Nov 2017.

²⁹ Volterra Fietta, 24 Oct 2017.

down 75 basis points;

15 Nov 2017 **Cairo (Egypt)** *Lusaka Times*. President Edgar Lungu meets with **Egyptian** president, **Abdel-Fattah El-Sisi** (2014-present) in **Cairo** to discuss cooperation in tourism, health, youth and medicine;

6 Nov 2017 **Johannesburg (South Africa)** *Mining Weekly*. **Galileo Resources** plans to fast track exploration at its **Star Zinc** mining project in Zambia;

3 Nov 2017 **Solwezi (Zambia)** *News24*. Lungu warns the judiciary not to block him from running in scheduled 2021 presidential elections;

31 Oct 2017 **Nchelenge (Zambia)** *Lusaka Times*. Home affairs minister, **Abdon Mawere**, states that the government is looking for permanent camps for refugees fleeing violence in the **Democratic Republic of the Congo (DRC)**;

27 Oct 2017 **Lusaka (Zambia)** *Anadolu Agency*. The IMF temporarily halts bailout talks with Zambia;

23 Oct 2017 **Lusaka (Zambia)** *Zambia Reports*. President Lungu launches \$50m fisheries project;

14 Oct 2017 **London (UK)** *Zimbabwe Herald*. **London's** court of appeal rules that Zambian villagers can sue UK-based **Vedanta Resources** through UK-based court system;

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